



**Submission by the
Commonwealth Ombudsman**

**INQUIRY INTO BIOSECURITY AND
QUARANTINE ARRANGEMENTS**

**CONDUCTED BY THE
SENATE STANDING COMMITTEE ON
RURAL AFFAIRS AND TRANSPORT**

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INTRODUCTION

On 23 June 2010, the Senate referred to the Senate Standing Committee on Rural Affairs and Transport (the Committee) to inquire and report on Australia's biosecurity and quarantine arrangements. The Committee has invited submissions on the inquiry by 22 November 2010.

The following terms of reference apply to the inquiry:

- a) the adequacy of current biosecurity and quarantine arrangements, including resourcing
- b) projected demand and resourcing requirements
- c) progress toward achievement of reform of Australian Quarantine and Inspection service export fees and charges
- d) progress in implementation of the 'Beale Review' recommendations and their place in meeting projected biosecurity demand and resourcing
- e) any related matters.

BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

Under s 5(1)(b) of the *Ombudsman Act 1976* (the Act), the Ombudsman is able to initiate investigation into any action that relates to a matter of administration undertaken by a Department or a prescribed authority.

In June 2006, the then Senate Standing Committee on Rural and Regional Affairs and Transport published a report on the administration by the Department of Agriculture, Fisheries and Forestry (DAFF) of the 2004 citrus canker outbreak. The Report recommended that the Commonwealth Ombudsman review investigations carried out by Australian Quarantine and Inspection Service (AQIS) to assess

whether they have been conducted:

- by appropriately trained staff
- in a timely manner
- in accordance with relevant legislation
- in accordance with the rules adopted by AQIS' executive.

The Commonwealth Ombudsman agreed to implement the recommendation through a series of audits derived from the own motion powers under the Act. This submission informs the Standing Committee on the progress of these audit activities.

The Commonwealth Ombudsman receives funding from DAFF to carry out this function. The Department has advised that the funding will cease after 2010-11. This is due to the impending appointment of the Interim Inspector-General of Biosecurity to audit biosecurity operations, and the ongoing reviews by the Australian Federal Police of DAFF investigations under the requirements of the Australian Government Investigations Standards (which are mandatory standards applicable to DAFF investigations).

COMMONWEALTH OMBUDSMAN AUDITS

As of 1 July 2009, AQIS was integrated into the Biosecurity Services Group (BSG) within the Department of Agriculture, Fisheries and Forestry. Within the BSG, the Compliance Branch is responsible for the conduct of investigations where biosecurity legislation appears to have been breached. The Branch consists of five regional offices situated in Sydney, Melbourne, Brisbane, Perth and Adelaide.

To address then Standing Committee's recommendation, this office has conducted three audits to date:

- In August 2009, this office published the first report on the results of an audit into the policies and procedures of the Compliance Branch.¹ This was intended to provide a basis for future audits of individual investigations. This report was previously provided to the Standing Committee for its information.
- From 28 June to 1 July 2010, this office conducted an audit of a sample of investigations carried out by the Sydney office of the Compliance Branch. The report on the results of this audit is in the process of being finalised.
- From 19 to 22 October 2010, this office conducted an audit of a sample of investigations carried out by the Brisbane office of the Compliance Branch. A report is currently being prepared on the results of this audit.

During 2010-11, this office will conduct another four audits (one each at the Sydney, Melbourne, Perth and Adelaide regional offices). This will provide a comprehensive review of investigations conducted across all regional offices of the Compliance Branch.

The Commonwealth Ombudsman identified specific areas that are covered by the Standing Committee's recommendation for review. For each investigation examined,

¹ The report is available at: http://www.ombudsman.gov.au/files/investigation_2009_13.pdf.

the applicable areas are reviewed against DAFF internal policies and guidelines, including:

- timeliness in initiating and conducting investigations
- investigations are conducted by appropriately trained staff
- case management and record keeping practices
- adherence to internal policies and guidelines in relation to conducting interviews, handling exhibits and executing warrants
- decision making in relation to the outcome of investigations (the outcome may be a brief of evidence, a letter to the offender or to take no further action).

AUDIT FINDINGS

The audit of the Sydney office of the Compliance Branch produced positive results.

The audit found that the Sydney office of the Compliance Branch is staffed by a team of experienced and qualified investigators. The initial allegations of breach of biosecurity legislation were assessed in a timely manner, which led to timely commencement of investigations. The investigations were conducted professionally and legislative requirements were observed where search or monitoring warrants were executed.

In most cases, investigators are aware of the internal policies, and external guidelines concerning the conduct of investigations and referring matters for prosecution to the Commonwealth Director of Public Prosecutions.

The main areas where improvements have been suggested are outlined below. The issues noted relate to a small number of cases, and could be remedied by strengthening internal policies and training.

- More consistent case management practices in complex investigations, particularly during the planning phase of an investigation in accordance with the BSG's internal policies. In one case, we saw evidence of using planning and case management tools as suggested by the internal policies. In another case of a similar level of complexity, there was no evidence of using planning and case management tools.

Although the use of these case management and investigative tools is not mandatory, they build a solid foundation for the investigation by setting its direction and focus. These tools also assist in conducting internal reviews of investigations to ensure that they are still on track and that the investigators have not missed any critical issues.

- The need to ensure defensible, transparent and consistent decision-making by keeping comprehensive records that detail the reasons for decisions.

In two cases, my office found that the reasons for the decisions were not well documented and there was little recording of justification for the

recommended course of action. In the context of investigations, comprehensive and contemporaneous record keeping is essential for evidentiary purposes, demonstrates the consistency of decision-making over time and is the basis for defensible decision-making should the decision ever need to be reviewed.

- Consistency between internal guidelines on the prioritisation of investigations and that which occurs in practice on the case management database. The electronic case management database provides a mechanism for investigators to prioritise and assign risk ratings to each case. This office found that the practice used on the database differs from the internal guidelines on how to prioritise investigations and suggested that the internal guidelines be updated to reflect the case management database.

The findings from my recent audit of the Brisbane office of the Compliance Branch were also positive, but my office noted the same issue in relation to the need to keep records that detail the reasons for decisions.

I understand that the BSG is currently undertaking a project to redraft its internal policies and procedures to, amongst other things, reinforce the need for comprehensive and contemporaneous record keeping.

We look forward to observing the progress that results from this project as part of the remainder of our audits to be conducted in 2011.